IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1898 OF 2005

Suresh Kapilrai Mankad... ... Petitioners.
Versus
Naib Tehsildar and Others.. ... Respondents.

Mr. D.C.Gomes for the Petitioners.
Mr.S.S.Pakale with Smt. N.V.Masurkar and Mr.Y.S. Bhate for Respondent Nos.4 and 5.
Mr. M.More, AGP for Respondent Nos.2 and 3.

CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

DATED : 6TH SEPTEMBER, 2007.

P.C.:

Learned Counsel appearing for respondent nos.4 and 5 has placed on record a copy of the letter dated 21st August, 2007 written by and on behalf of the Joint Director General of Foreign Trade, Baroda, to the Zonal Joint Director General of Foreign Trade, Mumbai. The same reads as under:

> "Please refer to your letter No.Lit-19/2007-08/ ZJDGFT/MUM dated 20.8.2007 on the above subject. In this connection, I am directed to inform you that the SCN for non-fulfillment of Export Obligation and SCN under FT (DR) Act, 1992 were issued to M/s. Gujarat Inject Ltd., Baroda only.

The said SCNs were not issued/served to any of the directors of the said company."

2. In view of the above, it is clear that any of the Directors of the Company were neither served with the show cause notice nor any action was contemplated against them under the show cause notice. Despite that the impugned order dated 28th March, 2003 was passed fastening liability upon them. The order patently is hit by *maxim audi alteram partem* and is liable to be set aside.

3. Consequently, we set aside the order dated 28th March, 2003 only qua the petitioner. However, the respondents are at liberty to proceed against the petitioner but in accordance with law and without prejudice to the rights and contentions of the petitioner.

4. This petition is, accordingly, disposed of. No order as to costs.

Sd/-

CHIEF JUSTICE

Sd/-

DR.D.Y.CHANDRACHUD, J.